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TRUTH IN LABELLING (FREE-RANGE EGGS) BILL 2011

**Bill introduced, and read a first time and ordered to be printed on motion by Dr John Kaye.
Second Reading**

Dr JOHN KAYE [9.51 a.m.]: I move:

That this bill be now read a second time.

I am proud to introduce the Truth in Labelling (Free-range Eggs) Bill 2011, which aims to end the large-scale deception of consumers who are genuinely repelled by the treatment of hens in the cage egg industry and who wish to express their ethical values through their purchase decisions. The bill will protect free-range egg producers who are forced into unfair competition with cage egg producers who misleadingly or falsely label their products as "free range".

Firstly, this bill will achieve those objectives by creating a legislative definition of "free-range egg production systems" that facilitates the natural behaviour patterns of hens. This includes the number of hens allowed to be kept in a certain area, surgical procedures and prohibited and housing conditions. Secondly, the legislation will enforce labelling requirements for free-range, barn-laid and cage eggs. This includes restrictions on positive imagery and text on cage egg packaging, as well as specifying the font size and type used on the labels. The bill stipulates that to fall within the definition of "free-range eggs" producers must ensure that their laying fowl meet the following requirements: access to a range area with a density of no more than 750 fowls per hectare; available shade, shelter and vegetation in a range area; stocking density within a shed kept to a maximum of six fowls per square metre for more than 4,000 fowls; exposure to natural sunlight and/or artificial light not to exceed 16 hours in any 24-hour period; availability of natural food; and prohibition on practices inducing moulting by not feeding, toe trimming using poly peepers and break trimming or any modification of the beak.

The Hon. Scot MacDonald: It's a bit like cannibalism.

Dr JOHN KAYE: I will get to that in a minute. The bill imposes a maximum penalty of \$55,000 for corporations and \$5,500 and six months imprisonment for individuals. The legislation responds to the growing number of consumers for whom the treatment of hens in the cage egg industry is simply unconscionable. The bill is based on the growing understanding of birds as social, sentient beings that need to develop complex relationships and whose wellbeing is fulfilled only when they can forage for food. For most consumers, the treatment of caged birds is simply unacceptable. There is increasing evidence as the consequences of cheaper egg production become clear: when hens are living in spaces smaller than an A4 page without enough space to stretch their wings; when hens suffer defeathering from rubbing painfully against the wire enclosure; when weaker birds die unnoticed in a cage, trampled to death by their cage mates; and, to compound their misery, when there is a lack of exercise causing a hen's bones to become weak, brittle and easily broken.

Studies have shown that one in six hens in battery cages live with broken bones and the pain that causes. Also, necessary beak modification to stop birds from pecking each other to death is a symptom of overcrowding and the consequent destruction of normal social relationships. This bill provides protection to consumers for whom such treatment is unacceptable and who do not wish to participate in an industry that treats sentient creatures in this way. It protects consumers from unscrupulous cage bird farmers who misleadingly label their products to suggest a level of animal welfare that does not exist, and it stops those producers from marketing attempts to disguise the appalling treatment of birds in the cage industry and from misleading terms such as "barn laid".

The bill provides protection to genuine free-range egg producers who respect both consumers and the birds in their care. It does so by allowing them to market their products without unfair competition from cage operators who can produce eggs at a lower cost because they do not respect the social and welfare needs of their birds. It rewards the efforts of farmers who respect their birds, and it will allow for growth of a genuine free-range industry that can connect to consumers and return profits to farmers who are meeting the market demand for free-range eggs.

It is increasingly clear that it is not possible to achieve a successful market for free-range eggs with respect to both producers and consumers without a legislated labelling regime that is enforced and protects consumers. It cannot occur without a definition and a mechanism to enforce that definition.

Quality information is central to both fair trading and the rights of consumers. To make it absolutely clear, this bill is not about stopping the cage bird industry. That is a separate debate on which The Greens and animal welfare groups have strong opinions. We believe that the cage bird industry should be phased out, but this bill is not about phasing out cage birds. Presumably many consumers and producers believe that it should be phased out, but this bill is not designed to achieve that outcome. The bill asserts the rights of ethical consumers to say that they do not want to be part of the cage bird industry and that cage bird producers do not have the right to mislead consumers or to unfairly compete with genuine free-range egg producers.

The root cause of the problem in the free-range egg industry is that there are no legislated definitions relating to it outside Tasmania and the Australian Capital Territory. The definitions that do exist are not legislated, are inconsistent and create gaps in which unscrupulous egg producers can hide their products under labelling that deeply misleads consumers. For example, the New South Wales Government endorses the industry code of practice, whereas the Royal Society for the Prevention of Cruelty to Animals and Free Range Egg and Poultry Australia have separate codes that are not necessarily consistent. The cage industry has developed expertise in labelling as a marketing tool to disguise the awful reality of birds that live in cages. Terms such as "farm fresh", "healthy hens", "natural" and the "environmental egg" connote expectations of production systems that are vastly different from the reality of the intensive farming practices employed by these producers.

Even "barn laid" has little meaning. Animals are often crowded into high densities and dirty conditions, creating conditions for birds that lead to feather pecking and cannibalism. Without access to the outdoors, barn-kept animals cannot fulfil their natural behaviours and instincts.

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The model code of practice states that to meet the hens' needs under the barn laid standard, producers do not have to provide hens with perches on which to nest and ground litter in which to forage. Barns are permitted to have wire mesh on the ground, which causes major problems for the feet of hens. The title "barn laid" misleads consumers into thinking they are buying a product that has been produced under decent animal welfare conditions and standards. That is simply not true. Yet consumers have been demanding labelling that protects the animals that produce the eggs they consume.

In September 2009 the Australian division of the Humane Society International released the results of a consumer survey of labelling in Australia. The 3,085 responses exposed extensive consumer misunderstanding over the labelling of animal products in Australia. The survey made explicit reference to confusion surrounding egg labelling, with respondents showing poor understanding of conditions for the different types of production systems. This confusion led to an overwhelming majority of respondents appealing for labelling reform. The introduction of labelling has been identified by both State and Federal authorities as a key to protecting consumers. This legislation emanates from a longstanding campaign about consumers being misled. A lack of labelling regulations of the egg industry has resulted in Australia experiencing multiple mislabelling violations in relation to free range eggs.

On 24 September 2010 the Australian Competition and Consumer Commission launched proceedings against a Western Australian egg company that falsely labelled its eggs as free range when they were produced from barn or cage production systems. From June 2008 until April 2010, C I and Company knowingly sold eggs that were mislabelled and in doing so engaged in egg substitution that breached the Trade Practices Act. However, prosecution in regards to egg labelling is extremely difficult under the Trade Practices Act because there is no clear legal definition of "free range", according to a 2000 report by the Department of Agriculture, Fisheries and Forestry [DAFF].

A case that was prosecuted by the Australian Competition and Consumer Commission represents the tip of a very deep iceberg. That is borne out by a continued stream of anecdotal evidence of deliberately rebranding eggs that come from caged or so-called barn animals and selling them as free range. This anecdotal evidence does not stand alone. It is borne out by statistical analysis of the materials that are available from the Australian Egg Corporation Limited [AECL] and from other sources. The Greens' own analysis shows that between 2006 and 2007 the total laying hen flock in Australia declined by 6 per cent. At the same time the population of free range eggs required to

produce the number of eggs that were sold, and were claimed to be sold as free range eggs, would have needed to have increased by a spectacular 37.2 per cent. In other words, between the years 2006 and 2007 an additional 332,000 free range hens would have had to have been added to the production stream.

Every egg farmer to whom I have spoken has said the following: firstly, it did not happen, and, secondly, it would not have been possible for it to happen. It is simply not possible to increase the number of free range laid eggs by more than 300,000 in a 12-month period. Even allowing for a spectacular growth rate of 15 per cent—a substantial increase in the number of eggs and way beyond anything that anybody believes could be achieved—the equivalent 36.8 million eggs sold in the period between 2006 and 2007 as free range did not come from free range animals. In other words, approximately 16 per cent of eggs on the market today that are sold as free range probably are not free range. Approximately one in six eggs that consumers who are seeking an ethically produced product purchase, and for which they will spend more money to purchase, actually come from hens that are living in conditions which are unconscionable to those who pay additional amounts to purchase them. In other words, those consumers are being savagely ripped off by unscrupulous egg producers.

But it is not just The Greens analysis that bears out the scandals that are occurring within the egg industry on a day-to-day basis. The New South Wales Food Authority 2006-07 annual report stated that inconsistencies occurred during the production, packing, wholesaling and retailing of free range eggs in New South Wales. The authority admitted that major inconsistencies existed, and that is bureaucratic language for rip-off. The Food Authority, which is responsible for regulating the food industry in this State, recognised that it did not have the requisite legislative teeth to produce an industry in which free range consumers could have confidence in the products they were buying, and confidence that those products came from hens that were treated in that way that consumers believe hens should be treated.

The review also determined that at some packing sites in New South Wales that managed both free range and caged eggs, the packing process did not ensure that the eggs were separately graded. In other words, the Food Authority clearly is stating that at packing sites where those types of eggs are being processed, blending is taking place and inevitably caged eggs are ending up in the cartons that are labelled free range. Consumers are being ripped off and genuine free range producers are being undermined. Inevitably this situation has resulted in some eggs from caged birds being sold to consumers as free range. That means that the official food body in New South Wales, which is the body of the New South Wales Government that is responsible for regulating food, is agreeing with The Greens. There is a crisis in the egg industry. The egg industry is ripping off consumers and undermining free range eggs.

It is not just the State Government that is making discoveries. In the Federal Government's synopsis report on the review of layer hen housing and labelling of eggs in Australia by the Department of Agriculture, Fisheries and Forestry, it is made clear that the Federal Government also thinks there is a problem. The report highlighted the importance of a uniform and consistent approach to the labelling of eggs to best satisfy consumer preferences. The report did not dismiss the role of the egg industry in undertaking third party auditing and generation of its own industry standards. However, it made clear that if implementation of industry standards is not considered satisfactory, a move must be made to legislate label requirements. Since the release of the report, both the Australian Capital Territory and Tasmania have introduced their own legislation with specific intention to regulate the production and labelling of eggs. This has not yet happened in New South Wales.

However, what has happened in New South Wales and throughout the rest of Australia has been that the Australian Egg Corporation Limited has taken over the industry role as the industry self-regulator. The Australian Egg Corporation Limited is the national industry body that represents more than 90 per cent of the egg producers in Australia. However, it is dominated by the three largest egg producers in Australia—Pace, Sunny Queen and Farm Pride. Each of these businesses has substantial investments in caged bird equipment and has no interest in a wholesale transformation of the industry to free range. Four of the five non-executive positions on the corporation's board are held by persons with strong associations with the three largest producers who have little interest in respecting consumer preferences or in allowing the smaller genuinely free range egg producers to flourish.

The Australian Egg Corporation Limited adopts the Industry Code of Practice definition for free range eggs and runs an accreditation scheme, which is the Egg Corp Assured [ECA], to advise customers that the conditions of hens have been inspected. However, Egg Corp Assured services

only a fraction of the egg industry. The participation rate of its registered businesses in New South Wales is approximately only 41 per cent. Low participation rate demonstrates that even if farms are represented by the industry body, there is no guarantee that they will adhere to free range egg standards. In 2010 the Australian Egg Corporation Limited left the world of generally understood common sense and, to protect its caged bird clientele, went to the extraordinary length of changing the stocking density requirement of free range farms under its representation from 1,500 to 20,000 chickens per hectare—that is, they increased it by a factor of 1,233 per cent.

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Therefore, the Australian Egg Corporation Limited would endorse egg producers to sell eggs labelled as free range under stocking density guidelines that keep 20,000 hectares per industry. That is some 30 times what genuine free range egg farmers believe is reasonable. It is hardly surprising that the Australian Egg Corporation Limited is supporting the big producers who want dodgy standards for free range eggs and are doing everything they can to stamp out small independent consumers. This is an industry where the big producers—Pace, Sunny Farm, Sunny Queen and Farm Pride—are working overtime to maintain their triopoly control, to destroy the small free range producers and to mislead consumers so as to ensure that they maintain their triopoly.

Therefore, it is hardly surprising that the Australian Egg Corporation Limited has entered debate over this legislation with hysterical opposition to The Greens bill. I will take members through its opposition to our legislation and identify how it is completely misleading. I parenthetically point out that The Greens supplied the egg corporation with a copy of our legislation, as we did to Free Range Egg and Poultry Australia, the Free Range Egg Producers Association of Australia and to a range of animal welfare groups and industry bodies. We consulted widely on this legislation and received a large number of positive comments. The Australian Egg Corporation Limited did not respond to us personally, but instead issued a media release, as is its right to do so. On 15 June 2011 the press release of the Australian Egg Corporation Limited was completely misleading and wrong. It claimed that our bill "goes beyond the current Government endorsed model code of practice". That is correct.

The current model code of practice recommends practices for free-range birds that constitute grotesque forms of animal cruelty—for example, beak modification and trimming. The model code is not industry best practice and is a long way away from that of genuine free-range farmers. In fact, the model code is causing massive damage to free-range egg producers. The Australian Egg Corporation represents only those farmers who wish to engage in large-scale production of eggs.

Mr David Shoebridge: Industrial producers.

Dr JOHN KAYE: As Mr David Shoebridge has interjected quite accurately, the industrial producers of eggs; those who see hens purely as industrial units, not as sentient beings with instincts, desires and social relationships. The model code is not industry best practice; it is a minimum standard and it needs to be revised to account for community expectations of what free range egg standards ought to be. People who bought an egg labelled "free range" and then told it came from an animal whose beak was mutilated would be horrified and feel ripped off. That is what is happening. The press release of the Australian Egg Corporation Limited states that our legislation would see free range hen densities reduced to unsustainable levels for a number of egg producers. The Greens are committed to supporting free range farmers.

Mr David Shoebridge: There would be a shortage if they were honestly labelled.

Dr JOHN KAYE: I acknowledge but reject that interjection, and I will address that issue in a minute. The Greens are committed to supporting free range farmers. We have consulted with a large number of successful free range farmers, all of whom have indicated that they can conform to the standards. In fact, they would welcome the standards because it would protect them from unfair competition. Our legislation has included a phase-in period for stocking densities to ease the transition for farmers who adopt the minimum standards. We are keen to see those producers make a transition to a level of treatment of their birds that can maintain the requirements and the interests of consumers.

The egg corporation claims that The Greens would ban legitimate forms of marketing for caged egg producers. However, there is absolutely nothing legitimate about marketing by some unscrupulous caged egg producers. It is not unreasonable for a person buying caged eggs with smiley faces on the cartons and a slogan such as "farm fresh eggs laid by healthy hens" to think that that is an accurate depiction of the conditions in which caged eggs are produced. However,

one in six hens has a broken bone, the weaker are trampled to death, almost all of them have lost significant numbers of their feathers and their beaks are mutilated.

How on earth can a smiley face be a fair representation of the treatment of those animals? If the caged bird industry is okay about what it is doing with animals let it put a picture of a caged bird on the egg carton—a bird that has been force moulted or a bird with a trimmed and mutilated beak. Let it be honest about its standards. That is fair trading. That is being fair to consumers. However, putting smiley faces and "farm fresh eggs laid by healthy hens" on egg cartons is false and misleading. This legislation will stop that from happening. I am proud to be part of a move that will stop that from happening.

The Australian Egg Corporation Limited firmly believes that there needs to be a cap on the outside densities for free range production and that the cap being suggested in the draft bill is unsustainable and unrealistic. It might be unsustainable and unrealistic for Pace and Sunny Queen, but the genuine free range egg farmers to whom The Greens have spoken say that it is a fair and reasonable standard. The consumers and the vets to whom we have spoken say it is a fair and reasonable standard. Consumers demand this standard, and not one that is bodgied up by the large egg producers.

The Australian Egg Corporation Limited suggested our low densities in our draft bill will result in the industry not meeting the current demand for free range eggs. That relates to the comment of Mr David Shoebridge as being correct. It is true that the current demand outstrips production. I was of the understanding that the majority of members of this Chamber like and support market dynamics, and if there is demand that exceeds supply then there should be a market signal that says, "Okay, we will increase supply." That can happen only when there is fair labelling. That matching of supply and demand will not happen. I think even the Government Whip would agree with me that there is a need for fair trading to allow markets to reach equilibrium.

The Hon. Dr Peter Phelps: I believe free trading leads to market equilibrium.

Dr JOHN KAYE: We can have that debate in my reply to the debate. I hope that the Hon. Dr Peter Phelps contributes to debate on my bill. By defining the term "free range" and enforcing this standard we are giving genuine free range farmers a fair go and a chance to expand. At the moment they are constrained from expanding and we have a dysfunctional market. Labelling is essential to make the market function appropriately. As consumer demand for genuine free range eggs increases, more producers will be able to move into the industry.

I conclude by speaking briefly about beak trimming and modification, and how it impacts on egg labelling. Beak trimming involves the removal of the top and sometimes bottom sections of a bird's beak. Usually it is done with a hot blade or some kind of infrared heat. It is done multiple times during a bird's life as a beak regrows. These animal husbandry practices are used to avoid pecking—and in many cases pecking other birds to death and cannibalism—where birds are kept in stocking densities that transgress their natural instincts.

Beak trimming causes chronic pain, which the industry denies. However, independent animal scientists have unequivocally stated that the animal husbandry practice of trimming a bird's beak causes chronic pain. It reduces the ability of the bird to feed naturally and drink, leads to significant short-term and long-term stress, and it damages social status. The beak of a bird is an important organ in respect of how it relates to other birds. By trimming and mutilating the beak the capacity of the bird to live a normal social life to which it is genetically programmed to execute is taken away. Birds are foraging creatures and a healthy beak is essential for food foraging behaviour—

Mr David Shoebridge: Particularly in my backyard.

Dr JOHN KAYE: Mr David Shoebridge mentions his backyard, but I mention the forest floor. Anybody who keeps chickens, as Mr David Shoebridge and many other members of this Chamber—

The Hon. Dr Peter Phelps: As I do.

Dr JOHN KAYE: And as the Government Whip does. As I was saying, anybody who keeps chickens knows that these birds need sufficient space to encourage them to be involved in normal behaviour so they avoid the abnormal aggressive pecking behaviour.

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Feather pecking cannibalism is directly linked with hens in stress, hens that are unable to carry out

their normal social functions and hens living under environmental deprivation. Abnormal pecking results from poorly designed and managed production systems. Overcrowding reduces the ability for birds to ground peck and forage and that behaviour is redirected into cannibalism. The links between space and welfare and the absence of beak trimming and other forms of bird mutilation is central to the definition of "free range eggs" in the bill.

Beak trimming is a quick-fix solution to the underlying production problems. Sweden, Norway, Finland and Switzerland have successfully banned it without significantly increasing pecking and hen injuries and without reducing the availability of eggs. As outlined in our definition, if free range egg production systems are properly implemented with appropriate stocking densities there is no legitimate reason to allow beak trimming. In fact, our legislation suggests a stocking density of initially 1,500 birds per hectare, reducing over four years to 750 birds, which is a density that the Free-range Egg and Poultry Association of Australia [FREPA] has already adopted.

The Greens have adopted the Free-range Egg and Poultry Association of Australia stocking density of 10 hens per square metre for up to 1,000 fowls in the shed, ranging down to six hens per square metre when there are more than 4,000 hens in the shed. This enforceable code will protect the hens' welfare, meet consumer expectations and lead to much better stocking densities, which will allow consumers when they buy a free range egg to know that the hen from which it was laid lived the sort of life that the consumer expects.

In conclusion, this bill is the first step of putting the egg consumers in charge of the products they consume. It recognises the need for a legislated definition to protect consumers and to protect free range farmers. It attempts to bring to an end decades of deception that is not only an offence to the values of consumers but also an attack on all genuine free range egg farmers. I commend the bill to the House. I look forward to the contributions of other members to the debate.

Debate adjourned on motion by the Hon. Peter Phelps and set down as an order of the day for a future day.